

(9)  
No. 86-1483

Supreme Court, U.S.  
FILED

APR 29 1987

JOSEPH F. SPANIOLO, JR.  
CLERK

In The  
**Supreme Court of the United States**

—◇—  
October Term, 1986  
—◇—

**RICHARD REETZ,**  
*Petitioner,*

- vs -

**KINSMAN MARINE TRANSIT COMPANY,**  
*Respondent.*

---

---

**PETITIONER'S SUPPLEMENTAL BRIEF  
AND SUGGESTION OF REMAND  
FOR RECONSIDERATION**

- IN LIGHT OF -

**BURLINGTON NORTHERN RAILROAD COMPANY v WOODS,**  
480 US \_\_; 108 S Ct \_\_; 94 LEd 2d 1 (1987)  
[No. 85-1088, decided 2/24/87]

---

---

THE JAKES ADMIRALTY  
LAW FIRM, P.C.  
By: LEONARD C. JAKES  
Attorneys of Record for Petitioner  
1370 Penobscot Building  
Detroit, Michigan 48226  
(313) 961-1680

GROMEK, BENDURE & THOMAS  
By: MARK R. BENDURE  
Attorneys for Petitioner  
577 East Larned,  
Suite 210  
Detroit, Michigan 48226  
(313) 961-1525

No. 86-1483

In The  
**Supreme Court of the United States**

—◇—  
October Term, 1986  
—◇—

RICHARD REETZ,

*Petitioner,*

- vs -

KINSMAN MARINE TRANSIT COMPANY,

*Respondent.*

---

---

**PETITIONER'S SUPPLEMENTAL BRIEF  
AND SUGGESTION OF REMAND  
FOR RECONSIDERATION**

- IN LIGHT OF -

***BURLINGTON NORTHERN RAILROAD COMPANY v WOODS,***

**480 US —; 108 SCt —; 94 LEd 2d 1 (1987)**

***[No. 85-1088, decided 2/24/87]***

---

---

**BACKGROUND**

This is a maritime personal injury action. Petitioner, a seaman, seeks redress for injuries sustained on Respondent's Great Lakes vessel. His complaint alleges a statutory cause of action under the Jones Act, 46 USC § 688, and an action under general admiralty and maritime law for the unseaworthiness of the ship. Suit was filed, and the case pursued, through the Michigan state court system.

Under Michigan procedure, the jury is not allowed to consider in its damage award interest for the delay

between commencement of suit and rendition of judgment. Instead, interest is allowed by statute [MCLA 600.6013; MSA 27A.6013], and the court is required to ministerially augment the recovery by assessment of prejudgment interest in post-trial proceedings. *Ballog v Knight Newspapers, Inc*, 381 Mich 527; 164 NW2d 19 (1969) (see Petition for Writ of Certiorari, pp. 6, 12-13).

Consistent with this procedure, the parties agreed that the question of prejudgment interest would be decided by the court after the trial. The jury returned its verdict for Petitioner, and the trial judge eventually allowed Petitioner interest on the damage award in accord with MCLA 600.6013; MSA 27A.6013. In reaching this result, the trial judge relied on the settled principle that, under substantive admiralty law, the trial judge may, as a matter of discretion, allow interest as a component of recovery (Appendix to Petition, pp. B-5, B-6).

The Michigan Court of Appeals reversed the allowance of interest. That Court found that there was an established federal procedure which precluded a trial judge from allowing interest in post-trial proceedings (Appendix to Petition, p. D-5). It also concluded that this perceived federal procedure governed to the exclusion of the contrary Michigan post-trial procedure which would ordinarily apply to a case tried in a state court forum (Appendix to Petition, p. D-3). Consequently, the Court held that conflict of law principles barred the forum (a Michigan state court) from applying its own interest procedure to a lawsuit arising under the substantive law of another sovereign (federal law).

### THE PENDING PETITION FOR A WRIT OF CERTIORARI

Petitioner has filed his Petition for a Writ of Certiorari. In that Petition, he has contended that the interests of

federal substantive law do not require a state forum court to refrain from following its own interest procedure (Petition for Writ of Certiorari, pp. 13-17).

**THE IMPACT OF *BURLINGTON NORTHERN RAILROAD COMPANY v WOODS*, 480 US \_\_; 108 SCt \_\_; 94 LEd 2d 1 (1987)**

Petitioner has filed this Supplemental Brief to bring to the Court's attention its recent decision in *Burlington Northern Railroad Company v Woods*, 480 US \_\_; 108 SCt \_\_; 94 LEd 2d 1 (1987) [No. 85-1088, decided 2/24/87] ("*Burlington*"). Petitioner suggests that *Burlington* is on point for the conflict of law question of whether interest issues are to be resolved by the procedure of the forum or the procedure of the jurisdiction whose substantive law applies.

*Burlington* was a diversity action arising out of a motorcycle accident governed by Alabama law. Under the principles of *Erie Railroad Company v Tompkins*, 304 US 64; 58 SCt 817; 82 LEd 1188 (1938), the federal forum was obliged to apply Alabama substantive law. Contrary to the law of the federal forum, Alabama law provided a 10% interest penalty in favor of an appellee who successfully defended a money judgment on appeal. In that context, the *Burlington* court was called upon to decide whether the interest procedure to be applied was that of the jurisdiction whose substantive law governed, or the forum jurisdiction's own procedure.

To resolve the question, this Court looked to the competing considerations. The test applied was that a forum's procedural rules "which incidentally affect litigants' substantive rights" do not impermissibly infringe on those substantive rights "if reasonably necessary to maintain the integrity of [the forum's] system of rules." *Burlington*, 94 LEd 2d at 7. Under this test, the Court

held in *Burlington* that the federal forum's use of its own procedure was required as that procedure did not infringe upon any "substantive right" existing under Alabama law.

### APPLICATION OF *BURLINGTON* TO THIS CASE

The analogy between this case and *Burlington* is compelling. Each involves the forum's ability to apply the procedure it has adopted to compensate personal injury litigants for the delay in obtaining their recovery. This component was denominated procedural in *Burlington*, just as prejudgment interest augmentation is procedural under the Michigan law involved in this case, *Ballog*, *supra*. In each case, the additional recovery is the method used for dealing with the delay encountered in the forum court system.

Reduced to its essence, the holding in *Burlington* recognizes that an interest augmentation of this type is not "substantive". It further recognizes that the forum's interest in regulating the delay in its own court system outweighs any interest of the jurisdiction whose substantive law is the source of the lawsuit. Applying the *Burlington* principles to this case, here the Michigan forum's procedure for dealing with the delay encountered in its court system by allowing prejudgment interest is not barred by the interests of the federal sovereign in the application of substantive admiralty law.

The comparison is all the more compelling when consideration is given to the comparable preclusion standards involved in this case and *Burlington*. There, the federal forum was allowed to apply its own rules "if reasonably necessary to maintain the integrity of that system of rules" even though this might "incidentally affect litigants' substantive rights". For the admiralty

context of this case, *Askew v American Waterways Operators*, 411 US 325, 338 (1973) permits the application of a state forum court's procedure unless "hostile to the characteristic features of the maritime law."

### SUGGESTION OF REMAND

In short, *Burlington* provides substantial guidance on the issue of whether there is a federal method of assessing prejudgment interest which precludes a state forum court from applying its own procedure. Petitioner suggests that this Court remand the instant case for reconsideration in light of *Burlington*. Otherwise, for the reasons discussed in the Petition and this Supplemental Brief, certiorari should be granted.

Respectfully submitted,

THE JAQUES ADMIRALTY LAW FIRM, P.C.

By: /s/ LEONARD C. JAQUES (P15450)

Attorneys of Record for Petitioner

1370 Penobscot Building

Detroit, Michigan 48226

(313) 961-1080

GROMEK, BENDURE & THOMAS

By: /s/ MARK R. BENDURE (P23490)

Attorneys for Petitioner

577 E. Larned, Suite 210

Detroit, Michigan 48226

(313) 961-1525

Dated: April 29, 1987